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LAW OF CARRIERS BY LAND, WATER AND AIR*

BY

C. Unikanda Menon, ADVOCATE, MADRAS.

FORMATION, PERFORMANCE AND DISCHARGE

Formation of Contract.—The general law of formation, performance and discharge of contracts govern the Law of Contracts with common carriers except with slight modifications regarding formalities caused by custom or statute. The contract is entered into between the owner of the " common carriers " on the one hand, and the owner of the goods, or passenger on the other In the case of a passenger to be carried, purchase of a ticket completes the contract. In the case of goods to be conveyed by carriers by land such as a Railway company the contract is effected by delivery of goods and the execution of a consignment note in three sets, one to be kept by the consignor, another by the carrier and the third to be sent along with the goods, containing particulars such as weight, description, freight, the person liable to pay the freight, and the name of the consignee, etc. Almost the same formality is required by the Indian Carriage by Air Act, XX of 1934. Rules 3, 4, 8 in chapter II of the First schedule prescribe a form of passenger ticket, luggage ticket and consignment note containing certain particulars about the description of the Goods and the rights and liabilities of the consignor and consignee If the Carrier accepts without a ticket or a consignment note, or with a ticket which does not contain some important particulars mentioned in those rules, the Carrier is not entitled to claim exclusion of or limitation to his liability under rules 17 to 31 of the Carriage by Air Act, XX of 1934. In the case of Carriers by Sea, for *e g*., a ship, when goods are conveyed in a general ship which undertakes to carry the goods of any, a contract under Bills of Lading contains terms of the contract such as description, quantity, etc , of the goods When a merchant employs a whole ship to carry his goods, etc , it is called a contract under a Charter party. Charter parties are of three kinds, (*a*) contract for use of the ship on a voyage or series of voyages, goods to be shipped by the charterer or in his name ; (*b*) Contracts for use of ship on a voyage or series of voyages with liberty to the charterer to use the ship for taking goods of other shippers and requiring the Master to give Bills of Lading for goods so supplied ; (*c*) Contract for use of ship for a period of time during which the charterer has the right to direct how the ship is to be used

Carriers by land and air, will be at the time of the contract at the railway station or at the aerodrome In the case of carriers by water for *e g* , a ship, it may not be at the port of loading at the time of the contract and the ship will have to proceed to the port of loading, to load and to perform the voyage to fulfil the contract.

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Voyage to the Port of Loading.—The ship chartered should proceed to the port of loading within the time fixed and if no time is fixed, with reasonable diligence. If port of loading is not named in the Charter party, the charterer should name it without unreasonable delay. Circumstances may intervene which would dissolve the contract before the ship reaches the port of loading If there is much unreasonable delay which goes to the root of the matter and which could not be compensated by damages, or if circumstances arise without default of parties which prevent the carrying out of the contract such as blockade of port of discharge or if the performance of the contract becomes illegal before the ship starts for the port of loading by declaration of war with the country of loading, the contract is dissolved before going to the port of loading

Loading.—Charterer is to provide cargo according to Charter-party without improper delay. It is enough if the cargo is ready at the usual starting place, though it is at a distance. Notice has to be given to the charterer immediately the ship is ready at the port of loading as otherwise he will not be liable for delay in commencing loading. If there are several loading places, it is the charterer's option to require loading at anyone without undue delay. If the loading place is not expressly agreed upon, the usages of the place decide it The shipper is to bring the goods at his expense near to the place where the ship is lying The expense of setting goods on board is to be borne by the shipowner

Charterer is entitled and bound to load only the holds or part of ship used for containing goods, but not to stow on decks and cabins If he loads on decks and cabins, he is liable to pay freight at the current rate. When charter-party authorises loading of several articles, it is left to charterer's option to fill with any one. If charter-party is to load a full cargo, it cannot leave broken stowage. Preparing the goods for loading such as pressing cotton, etc, is the duty of the charterer and costs are to be met by him. Loading, once completed, discharges the charterer from his obligations A ship should wait at the port of loading for the agreed days unless the charterer refuses to provide cargo, but to make breach complete, the ship should stay a reasonable time after loading days, after which period the ship-owner keeps the ship at the port at his risk After the charterer has failed to load, the shipowner should reasonably try to mitigate the loss and damage by getting the cargo from others. When a full cargo is loaded, charterer is not entitled to wait till expiry of full period of lay days. It is ship-owner's duty to stow the goods properly and provide proper dunnage. He is liable in damages if ship does not take full cargo owing to unskilful stowage by his servants, but shipowner is excused if stowage is directed by shipper. Cargo is not to be loaded on deck as they are exposed to greater risks, unless shipper consents or a custom to that effect exists Under the Merchant Shipping Act, 1894 (ss 446 to 450 and ss 492 to 502), notice of certain explosives has to be given to Master before shipping. The Carriage of Goods by Sea Act of 1924, gives power to the carrier to destroy goods of inflammable, explosive, or dangerous character which he has not consented to carry. S. 8 (9) of Explosives Substances Act gives the right to search and break open any box or package without any liability.

In the case of Carriers by land, the same law obtains The owner of the goods is bound to load them at the time and place and in the manner prescribed. He is not to tender or deliver for carriage dangerous or offensive goods without previous notice to the Railway authorities and without distinctly making clear their nature on the outside of the packet containing them. If any Railway servant has reason to believe any such goods to be contained in any packet and with respect to the contents of it no notice has been given, he may cause the packet to be opened for ascertaining its contents. But this restriction in respect of the carriage of dangerous goods will not bind the goods tendered by order of the Government or any goods carried by an officer, Soldier, Sailor or Airman or Police Officer, or a member of the Indian Territorial Force or of the Auxiliary Force in India—*Vide* Section 59 of the Indian Railways Act IX of 1890.

In the case of Carriers by air, the carriage by air craft of explosives and of arms and munitions of war is forbidden by international agreement Each State, may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus As' a measure of public safety, the carriage of objects other than those mentioned above may be subjected to restrictions by any regulations by the State provided such regulations shall be at once notified to the International Commission for air navigation, which shall communicate this information to other foreign countries—*Vide* articles 26 to 28 of the Paris Convention of 1919. After the air craft is loaded with the goods, a load-sheet is prepared and checked.

Transit.—The Law of Transit is the same for all kinds of carriers. Ship-owner's duty is to make the ship seaworthy, properly man, equip and supply the ship, make its holds in which goods are carried fit and safe for their reception, carriage and preservation. He is to make it ready for sailing by paying port charges, without needless delay or deviation Deviation makes the shipowner liable for delay and he is not protected by the exceptions of perils in the contract—*Vide* Rule 4 to article IV to the schedule of the Indian Carriage of Goods by Sea Act, (XXVI of 1925). But deviation is justifiable if it is to save adventure, to avoid danger threatening ship or cargo or both, and to save the lives of those in distress in other vessels Deviation is not justified to save property in other vessels, nor is deviation justified though it is in the first instance to save life yet subsequently it is to save property. In *Stag Line, Ltd* v *Foscolo Mango and Co* [1], Lord Atkin said that " The true test seems to be what departure from the contract voyage might a prudent person controlling the voyage at the time make and maintain, having in mind all the relevent circumstances existing at the time, including the terms of the contract and the interests of all parties concerned, but without obligation to consider the interests of anyone as conclusive "

Carriers by land are not to deviate (*Davis* v. *Garrat*, 6 Bing. 716). Carriers by air may alter their route in case of necessity—*Vide* article 8, para. 3 (4) of the International Air Traffic Association.

Shipowner or charterer is bound to protect each part of the cargo by all reasonable precautions by ventilation to prevent the goods from being further damaged and to check further destruction or deterioration

Master's right and duties—The Master is the shipowner's servant and has got custody of the goods or cargo for carrying out the shipowner's contract. The Master has the right to raise money by pledging the cargo or mortgaging the ship by what is known as a respondentia or a bottomry bond or even to sell the cargo in case of need He can incur expenses to preserve the cargo by unloading and drying it He can employ men to save it from wreck of the ship. Before incurring such expenses the owner of the cargo has to be communicated with. If the Master sells the goods for real necessity when it is not possible to take the owner's instructions, the title passes to the purchaser. If Master sells goods under circumstances which give him no authority to sell and the owner of the cargo does not ratify the sale, the property does not pass to the purchaser. The Master's authority to sell is determined by the law of the flag, *i e*, the law of the place to which the ship belongs. But if the Master sells in a country foreign to his flag under circumstances justifying the sale by the law of that country, the sale is valid. It is the Master's duty to repair and preserve the ship and carry it to the place of destination and earn the freight Master has the right to repair at the port of refuge, if ship is disabled. Lord Esher said " If the cost of the repairs necessary to enable her to complete the voyage contracted for would be more than the benefit which the owner (of the ship) would derive from it, then it would be impossible in a business sense to repair her ". *Vide Assicurazioni Generali* v *ss. Bessie Morris Co* [2] If the ship cannot be repaired at all or could be repaired only after much loss of time, the Master as well as the shipowner should procure another ship and transport the cargo to destination The shipowner is not bound to employ another vessel

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1 (1932) A C 328.

2. (1892) 1 Q B 571 , (1892) 2 Q.B. 652

at his loss. Master is given a reasonable time to elect whether to abandon, or tranship and repair after communicating with the shipowner. If voyage is abandoned, Master may contract to forward the goods to their owner The new contract must be fair and advantageous to the owner of the goods If goods in an abandoned ship are perishable he can sell them if there is no time to communicate with the owner If a ship is abandoned and the Master does not send the goods in another ship, all claims to freight are abandoned unless it be an advance freight. If Master and crew abandon ship voluntarily and are not dispossessed by a hostile foe and the ship is saved by salvors and brought to port, cargo owners may claim their cargo without paying freight.

Discharge.—Regarding carriers by air, under article 13 of schedule I of the Carriage by Air Act, 1932, the carrier is to give notice to the consignee as soon as the goods arrive at the place of destination, and the consignee is entitled on their arrival at the place of destination to require the carrier to hand over to him the air consignment note. The carrier is bound to deliver the goods to him on payment of the charges due and on complying with the conditions of carriage in the consignment note If the carrier admits the loss of goods or if goods do not arrive at the expiration of seven days after due date for arrival of goods, the consignee is entitled to enforce his contract against the carrier. Article 19 renders a carrier liable for damage by delay in the carriage by air of passengers, luggage or goods Articles 18 and 20 mention the conditions on proof of which the carrier escapes liability for injury to passenger or goods or luggage. Article 22 sets out the extent of liability. Article 29 provides that receipt by the persons entitled to the delivery of luggage or goods is *prima facie* evidence that the same have been delivered in good condition. It further provides that, in the case of damage to luggage the person is bound to complain to the carrier within three days from the date of receipt, in the case of damage to goods within seven days, and in case of delay, within fourteen days from the date on which the luggage or goods have been placed at his disposal Article 28 speaks of the venue of the suit Article 29 prescribes two years from the date of arrival as the period of limitation for action for damages. In cases of combined carriage, partly by air, and partly by another mode of carriage, under article 31 (2) of schedule I of the Carriage by Air Act of 1932, the parties may insert in the document of air carriage conditions relating to other modes of carriage provided that the carriage by air falls within the terms of rule 1.

In the case of carriers by land, the transit ends by actual delivery of the goods to the person mentioned in the contract or his agent, by tender and refusal to accept, or refusal to pay charges, or by attempt to deliver and failure through no fault of the carrier, or by failure of the consignee to remove within a reasonable time. At the end of transit, the carrier is liable only for negligence. The carrier shall not deliver to the consignee if goods are supplied to the carrier by one without the consent of the owner and the real owner claims it, or if an unpaid vendor stops the goods The carrier by land, such as a Railway company, should deliver goods safe, in time and to the right person. Special agreement by what is known as "Owners" risk note frees a common carrier from liability to deliver safe The carrier is liable, for delay in the delivery of goods owing to his fault. If delay is due to default of some others beyond the carrier's control, or if delay is due to sudden and unexpected pressure of business, he is not liable. The carrier should deliver to the right person at the place addressed Though he is not bound to deliver at the house of the consignee yet if the consignee's address is known, the carrier should give him notice The owner can require delivery at an altered place before goods reach original destination, provided carrier is serving at the altered place The carrier is responsible for damages caused by loss, injury, misdelivery or delay If goods are lost the market value of the goods at the time and place of delivery, if there is a market at destination, *minus* the cost of carriage, is the quantum of damages to be awarded. If there is no market at destination, the market value of the place where delivery was given to the carrier *plus* the cost of carriage *plus* any profit which the consignee might have made by resale, if goods are intended to be sold, is the quantum of damages. But if goods are only injured, damages are measured

by the depreciation in value of the goods which was the natural result of the injury. In case of delay, such damages as have arisen naturally in the ordinary course of things are given. If owing to extraordinary circumstances heavy loss is likely to be caused to the owner, unless knowledge of those circumstances are brought to the notice of the carrier and unless he is given an opportunity to accept or reject those goods, the carrier is not liable for such heavy loss.

In the case of carriers by sea Port of discharge is usually mentioned in a Bill of Lading for voyage in a general ship In a chartered ship if charter-party leaves it uncertain, the charterer is to name the port of discharge in reasonable time. If he does not do so, the Master is to act on his judgment The Master is not bound to communicate with the charterer before doing so If the Master has reasonable opportunity, he is to notify the arrival of the ship at port of call A port is a place where vessels lie safely with shore to land goods, with facilities for trade having wharves and wharehouses It need not be physically safe but must politically. If shipowner accepts a port of discharge as safe at the time of signing Bill of Lading he cannot afterwards object but claim damages if unsafe If cargo is of varying goods, discharge is to be at the place suitable and convenient for consignees as a whole. If there are several places in the port for discharge of cargo the option to discharge at any particular place is with the shipowner in the case of a general ship, and with the charterer in the case of a chartered ship The mode of discharge is according to practice of the port, *e g*, whether in the open water or at a wharf or in dock If more than one of these methods are commonly adopted, the ship-owner may choose, provided the method he chooses should not involve extra charges on consignee, if by another suitable mode they could be avoided. Generally, charterer or consignee must take cargo from ship's side and shipowner is discharged on delivery at the ship's side and he is to provide enough men and appliances. The shipowner is to take goods out of the holds and deliver them on deck and to separate goods so as to give delivery to several consignees Master is not bound to notify ship's arrival when ship is a general ship or a chartered one It is the duty of the consignee to watch But the Master ought to enter ship's name at the Custom House and make such other public notifications

Liability of consignee on landing—If consignee did not appear to claim goods at the time fixed, or if no time is fixed, within a reasonable time having regard to the usages of the port the Master has the power to land and warehouse them and the consignee is liable for wharfage or other expenses. If goods are detained for want of proper description in the Bill of Lading the ship owner is not liable.

Personal delivery to consignee or his agent is necessary. But personal delivery may be excused by an established course of business at the port. It may be excused by special terms of contract Delivery is to be made to the right person entitled as the holder of the bill of lading Delivery to a consignee who is not holding the Bill of Lading does not discharge the shipowner If there are conflicting claims the proper course is to interplead Delivery must be of the right goods. When discharging cargo, if there is a shortage of delivery of particular goods and also a residue of unidentified goods, the shipowner cannot compel the consignees to take the unidentified goods as *pro rata* fulfilment of the contract to deliver.

Through Bills of Lading—In contract by shipowner to deliver to another carrier to forward to a further destination, shipowner's responsibility does not terminate when goods leave the ship. He has to contract with a carrier and deliver the goods to be forwarded Frequently through-Bills of Lading are issued partly by sea and partly by land

Warehousing—When the consignee fails to take delivery, the shipowner or other carrier by sea has to keep goods on board or at the wharf or warehouse at his own risk for a reasonable time. While so holding the shipowner is liable as a carrier. By arrangement, or following a usual course of business if the carrier at the end of transit puts the goods into a warehouse for the owner, he ceases to be responsible as a carrier but he becomes responsible as a warehouseman. Having

warehoused the goods, the shipowner gives notice to the consignee that he holds them only as a warehouseman and the consignee accepts notice. If the consignee refuses to take delivery or fails to appear within the agreed time, the carrier may terminate his responsibility as a carrier and by warehousing the goods becomes liable as a warehouseman If he still holds as a carrier he does so under the contract and is entitled to the benefit of exceptions in the Bill of Lading. But if he warehouses them and becomes liable as a warehouseman, it is doubtful whether the exceptions of negligence in the Bill of Lading apply.

Lien for freight —On landing the goods at the warehouse and placing them in the custody of the warehouseman the shipper or carrier is to give notice to the warehouseman in writing that goods kept are subject to the shipowner's or carrier's lien and other charges and to keep them till such lien is discharged. The lien is discharged upon production to the warehouseman of the receipt of payment of the amount due to the shipowner or carrier or upon deposit with the warehouseman the sum due to the shipper or carrier towards freight If that lien is not discharged, warehouseman has the right to sell the goods after keeping them for ninety days in a warehouse and if they are perishable then much earlier by publishing in the local newspapers and by giving notice to the consignee, if his address is known. *Vide* section 497 of the Merchant Shipping Act of 1894. Proceeds of the sale are to be applied to pay customs or excise duties, charges of wharfinger and shipowner or carrier. Whether a shipowner is liable for right delivery to consignee after so delivering them does not seem to be decided. The Merchant Shipping Act does not relieve the shipowner of that duty. If by warehousing them he has ceased to have all control over the goods, he ceases to be liable for correct delivery, but if he remains in control, liability continues. Shipowner is not liable for their safety in the warehouse though it is his duty to direct the warehouseman as to the person entitled to delivery.

Warehouseman's responsibility —Warehouseman taking custody of goods under the Merchant Shipping Act is under the obligation to deliver the goods to the same person as the shipowner is bound under contract to deliver.

STOPPAGE IN TRANSIT, GENERAL AVERAGE, SALVAGE AND WRECK, FREIGHT AND DEMURRAGE, LIENS AND PREFERENCE.

Stoppage in transit is exercised by unpaid vendors. He parts with possession of the goods and the Bill of Lading. The goods are in transit. The buyer becomes insolvent in the sense that he is unable to meet his engagement. An unpaid vendor before giving possession has lien for his price, but when he parts with possession his lien ceases to exist and only a right to stop in transit remains. Hence stoppage in transit is regarded as an extension of unpaid vendor's lien[1].

Effect of exercise of the right —By the mere exercise of this right, an unpaid vendor does not regain property, nor cancel sale. He recovers only possession till the price is paid[2]. He cannot demand actual possession during transit against the will of the carrier except at the contracted place of destination. This right of stoppage in transit is subject to the possessory lien of carrier, warehousesman, etc , but not subject to any general lien of the carrier in respect of the goods.

Transit —It involves two ideas (*a*) the goods are in transit from the time they leave vendor's hands till they are taken possession of by the buyer; (*b*) they are to go to some particular destination. Delivery of goods by the vendor to carrier for transit, though the carrier be named or employed by the buyer, does not end the transit This is true whether the goods are in a general ship or a

1. *Vide* section 43 of the English sale of Goods Act of 1893 and section 50 of the Indian Sale of Goods Act, III of 1930.

2 *Vide* section 48 of the English sale of Goods Act of 1893 and section 54 (1) of the Indian Sale of Goods Act of 1930

chartered ship. But if a ship is chartered by the buyer upon such terms as make over the complete control of her to him, the Master and the crew becoming his servants, transit is at the end A carrier may, before delivery of the goods, become the agent of the buyer by express agreement and then his possession is only that of the buyer. Or again by implication from the course of business between the buyer and the consignee, the carrier holds possession for the consignee, as when the carrier habitually stored the consignee's goods in carrier's warehouse on their arrival and holds them for the consginee subject to his orders. If the buyer or his agent obtains delivery of goods before their arrival at the appointed destination, the transit in at an end [1] Part delivery is insufficient to put an end to transit. In any case where the goods are in their nature separable, and the portion undelivered remains in the hands of the carrier as such, the right of stoppage in transit may be exercised as to the undelivered portion.[2] But if the whole of the cargo is one entire machine and possession of the part might amount to the possession of the whole, then delivery of part to the buyer may put an end to the transit. In the case of delivery by one carrier to another to forward or by a carrier to the warehouseman at the destination, the transit still continues, unless he takes as agent to the buyer.

In case of delivery to buyer's agent to forward to a destination there might arise two cases :—One, where further destination has been notified to the vendor by the vendee and the agent is definitely instructed to send, the transit continues, even after delivery to the agent, till destination is reached. Two, where no further destination has been definitely notified to the seller by the buyer, the transit ends. Buyer has no right to intercept goods before destination, if destination is fixed. But if no destination is agreed upon, then the buyer may at any time end the transit.

Stoppage in transit is exercised by vendors and sub-vendors. Each vendor loses his right while the buyer who has purchased from him transfers the goods and the Bills of Lading for them to the sub-vendor. The right of vendor to stop is defeated by the intervening right of other persons. If while the transfer continues, the buyer assigns the goods or transfers the Bill of Lading for them to one *bona fide* for value without notice that they have not been paid for, the vendor's right of stoppage is lost as against him. Under section 47 of the English Sale of Goods Act of 1893, to defeat the right of stoppage in transit, there must be a valid sale or dispostion of the goods by the buyer valid to transfer property and there must also be a transfer by the buyer of some document of title to the goods. Part-payment or giving acceptances by buyer does not prevent his right. If the vendor agrees to take something else than money—such as goods or bills—in absolute payment of the price, he will, on receiving them, cease to be an unpaid vendor and will lose his right.

Notice of stoppage in transit must be given by the vendor or his authorised agent to those in immediate custody of the goods, *i.e.*, usually to the Master in the case of a cargo. Notice given to the shipowner and transmitted by him to the master is sufficient but not unless and until it reaches the Master. Notice given to the principal must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate in time to his agent in possession to prevent delivery to buyer.

By exercising this right, the vendor must take possession of the goods from the carrier by payment of freight, if any due, up to the ultimate destination. For breach of this obligation, the vendor will be liable in damages If Master of a ship delivers to buyer after valid notice to him of the vendor's exercise of the right of stoppage in transit, Master and shipowner are liable in damages to

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1. *Vide* section 47 of English Sale of Goods Act of 1893.

2. *Vide*. section 46 of English Sale of Goods Act of 1893 and section 52 of the Indian Sale of Goods Act III of 1890.

vendor Section 54 (2) of Indian Sale of goods Act III of 1930 confers a right to re-sell perishable goods without notice and non perishables after notice for the sale price. There does not seem to be any decided case as to the title of a *bona fide* assignee for value without knowledge of the notice of stoppage in transit given by a vendor The answer seems to be that the assignee gets title to the goods in preference to such a vendor.

Right of vendor, subject to pledge, mortgage or sub-purchase. Where the vendor, instead of assigning, pledges or mortgages, along with the Bill of Lading, the vendor's right of stoppage in transit continues subject to the charge On that being paid off—no matter by whom—the unpaid vendor's right to stop revives If the vendor has given notice to stop, he will be entitled to claim upon balance of sale proceeds. If the original vendor duly gives notice to stop the goods, but the sub-purchaser has not paid to his vendor, the original vendor is entitled to require that the purchase money due from the sub-purchaser should be paid over to himself so far as is necessary to satisfy his claim.

Carriers by air and stoppage in transit—In the case of carriers by air, article 12 of the Carriage by Air Act, 1932, schedule I gives the unpaid consignor the right of stoppage in transit. He has the right to dispose of the goods by withdrawing them either at the aerodrome of departure, or at destination or by stopping them in the course of any journey on any landing or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note or by requiring them to be returned to the aerodrome of departure. Article 12 (2) says that if it is impossible to carry out such order of the consignor, the consignor must be forthwith informed. Article 12 (4) says that the above right of the consignor ceases when that of the consignee begins in accordance with article 13, *i.e*, on arrival of the goods at the place of destination Nevertheless, if the consignee declines to accept the consignment note or the goods or if he cannot be communicated with, the consignor resumes his right of disposition.

General Average—(*a*) Law of general average is peculiar to carriage by water. This law is derived from the ancient law of Rhodes which was adopted into the Digest of Justinian as Lex Rhodia How far this branch of law might one day become applicable and useful to carriers by air, as aerial navigation increases, affords a wide field for useful speculation Average is general and particular. In maritime adventure there are three interests (*a*) the ship with her stores, furniture and tackle ; (*b*) the cargo and (*c*) the freight When loss is sustained by one interest from a danger peculiar to it, it is borne by it alone, and it is particular average. But to avert danger to the whole adventure, if some particular interest is sacrificed, such as the throwing overboard of cargo or the cutting of mast etc, for safety in storms, it is general average Expenditure incurred to save a particular interest is particular average expenditure Extraordinary expenditure incurred to save ship and cargo is general average expenditure Every particular interest can be called upon to contribute to the general average expenditure incurred

General average sacrifice—No contribution is claimable if common danger arose from negligence or wrongful conduct of claimant, *e g*, unseaworthiness of ship, negligent navigation or dangerous condition of goods To claim contribution (*a*) the interest sacrificed must be common to the whole martitime adventure ; (*b*) goods must be thrown overboard, not forced out by waves or destroyed by lightning or tempest ; (*c*) the throwing should be to lighten the ship and there must be an extraordinary common danger. Jettison is a familiar instance of general average sacrifice Jettison of deck cargo in a general ship does not confer the right to contribution unless (*a*) there is usage or (*b*) other owners consent or (*c*) where the cargo both above and below deck belong to the same shipowner who chartered the ship and the charter-party stipulated for loading it

To avert a common danger, a ship and its stores may be sacrificed, or a ship's tackle and stores may be put to some dangerous use not intended to be so used

and thus getting destroyed , or damage may be caused to a ship in a fight with a privateer and loss may be caused towards the value of gun powder and shot and the cost of curing the wound of the crew, as resisting a privateer is part of the adventure. As to the question whether voluntary stranding of a vessel to save it from a storm or to avoid capture or foundering in deep water, etc , is a general average act, Abbot and Arnold answer in the affirmative Lowndes who once held a contrary view has now changed his old view and agrees with them In the case of *The Seapool*[1] while construing rule 5 of the York Antwerp Rules of 1924, voluntary stranding was held a general average loss In the United States, the same view is held Damage done to a ship or cargo sustained in extinguishing fire on board is a general average loss Where damage to cargo arises partly from an act of sacrifice and partly from an act of accidental peril and damage done by each is not distinguishable, no question of general average contribution arises

General average sacrifice and general average expenditure—Where voluntary sacrifice of money is made to save both the ship and cargo under extraordinary danger it is general average expenditure. To avoid common danger, master employs men or other vessels to render assistance or to put the ship in a Port of Refuge General average expenditure may be compared to salvage. Both are distributed over whole property in proportion to values, though there may be a difference as to when the liability is to be ascertained and though salvage is a reward and not an expenditure. Expenses incurred in raising and saving a stranded ship and cargo or dragging her off a bank while loaded are such expenses, subject to limitation that the burden thrown on cargo must not be greater than for saving it separately. Occasionally the question has arisen whether a shipowner can charge for his own services *Schuster* v *Fletcher*[2] held that he is not entitled but Lord Herschell in *Rose* v. *Bank of Australia*[3] dissented from it. Expenses of going into a Port of Refuge such as pilotage, towage and harbour dues are Port of Refuge expenses and it is a general average expenditure To justify a deviation to a Port of Refuge it must be to avoid an immediate danger. The danger may be either external or due to original or encountered defect of ship, or the danger may be owing to insufficient men and stores making voyage unsafe The expenses of coming out of the Port of Refuge was held to be a general average expenditure in *Atwood* v. *Sellar*[4] while it was held to be otherwise in *Svensden* v. *Wallace*[5] Regarding wages and maintenance of crew when ship is put in a Port of Refuge the older view[5] was that they form general average expenditure but the later view is that they do not[6] The latter is the accepted English view Nearly all other countries follow a different rule and York Antwerp Rules make wages and cost of maintenance subjects of general average contribution Regarding cost of discharge and re-loading cargo at a Port of Refuge, if discharge is for safety of ship and cargo, *e g* , if there is leakage of ship and the leakage cannot be got at without discharging cargo, it is entitled to be contributed But if discharge is for the benefit of cargo only, such as drying wetted grain to save it from rotting, then the cost is to be borne by the owner of the cargo, unless the wetting arose from a general average act. Cost of re-loading is not a general average expenditure. Regarding the cost of warehousing goods at Port of Refuge, there are conflicting views. Under York Antwerp Rule (1) (*c*) this is a general average expenditure. The loss or damage to cargo which is caused in a warehouse from fire and thieves seems to be a general average expenditure Damage suffered by cargo in the course of being discharged, re-loaded or stored is a subject of general average contribution under York Antwerp Rule XII

Contribution—"The whole law on the subject is founded on the principle that the loss to the individual whose goods are sacrificed for the benefit of the

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1. (1934) L R Pro 53
2. (1878) 3 Q B D 418
3. (1894) A C 687, 703
4. (1880) 5 Q B D 286 at 290
5. (1884) 13 Q B D 69
6. *Power* v *Whitmore*, (1815) 4 M & S 141 105 E R 787

rest is to be compensated according to the loss sustained on the one hand and the benefit derived on the other "[1] The time for calculating the extent of sacrifice and the contribution is when the ship and cargo complete the voyage or when it is brought to an end. All interest at risk when sacrifice is made and continued safe down to the completion of the voyage must contribute proportionately to their values at destination. Owners of a cargo who sold it for their benefit at intermediate port after sacrifice should contribute in respect of the benefit realised. Owner of the property sacrificed has to contribute along with the rest If, during the voyage, there were several acts, each owner of sacrificed interest is to contribute to all the sacrifices Only property at stake and freight depending upon its safety that are to contribute. There is no contribution for lives saved Provisions for consumption of passengers, wearing apparel, jewels and other things belonging to passengers and crew taken on board for private use and not for traffic are exempt from contribution. Where goods are sold at Port of Refuge to pay general average expenses they are contributed for on arrival at destination. If value realised at Port of Refuge is higher than it would have been at Port of destination, owner of goods could claim contribution on the higher amount.

Contribution by freight—Where freight is payable on delivery of goods, a sacrifice of them preventing delivery involves a sacrifice of the freight on them That must therefore be contributed to. So too the freight on the goods which are ultimately saved should contribute. When at the time of sacrifice, the ship had more engagements and when freight is conditional on completion of subsequent voyages, as under a charter-party for a voyage out and home at a freight to be paid at home the whole freight is to contribute

Remedies—Shipowner has a lien upon goods for general average contribution, whether the claim is on his behalf or on behalf of the cargo owner. The lien prevails over earlier bottomry bond goods are not usually detained as calculation of the amount of contribution takes time but are given to a receiver on his undertaking to pay the amount due or on a deposit of the same with a bank or on other security. Shipowner can sue cargo owner for contribution and if goods change hands on a consignee taking delivery undertaking to pay contribution, he could be sued. An owner of goods entitled to general average contribution may sue shipowner or other cargo owners. His claim is personal He cannot proceed for claim *in rem* nor has he a lien.

Salvage and wreck: Salvage.—Salvage and wreck are peculiar to law of carriage by water and by air. There is no parallel to it in the Law of carriage by land. Salvage is service rendered to the owner in the recovery of property subject to a lien for reward. This rule is based upon public policy to encourage strangers to save vessel from danger at sea or in a river The property saved must be a ship, her apparel, cargo or wreck. Salvor had no right of action at common law. He has possessory lien, if in possession He has maritime lien and if he is not in possession he can procure an arrest. In common law Courts, he had no right of action but in Admiralty Courts, he can take proceedings *in rem*. Salvage depends upon the saving of some property. It is not necessary that the safety was wrought about by actual services. It is enough if services have been rendered which have or may have rescued the ship or cargo. But if a salvor is employed, he is entitled to reward on his contract, no matter whether property is saved or not Merchant Shipping Act of 1894 enacts that salvage is payable for services rendered in saving a vessel, cargo, apparel of a vessel, etc , in distress near the coast of the United Kingdom. Sections 544 and 545 provide for rewarding services in saving life from ship by payment by owner of ship or cargo, etc., saved. Before the Merchant Shipping Act of 1894, there was no reward for saving life But where acts of life-salvage could be connected with property by the same salvors, the Court enhanced the amount of salvage given for services to the property. Ways of earning salvage are by personal services on board a salved ship by towing her,

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1 *Per* Bovill, C J. in *Fletcher* v. *Alexander*, (1868) L R 3 C P 375 at 382

by re-capturing her, by supplying her with men and stores for want of which she is in danger or by protecting the ship and cargo after she had become a wreck.

Conditions of salvage service.—There should be impending danger or reasonable apprehension of it. Service should be rendered by persons not under any public or private duty to render. Service must help appreciably in assisting to save the vessel or cargo. Passengers are bound to protect the ship and cargo against common danger and are not entitled to salvage. Crew and officers of ship or tug are not, but if after the termination of their service they render salvage work, they are entitled. Public officers whose duty it is to render assistance, *e.g.*, officers and crew of a ship of the Royal Navy are not entitled to reward. That the Crown cannot claim salvage even by agreement apart from the Merchant Shipping Salvage Act, 1916, was decided by the House of Lords in *Admiralty Commissioners* v. *Valverda (Owners)*[1]. Where salving and salved vessels belong to the same owner, the old law was that no claim for services was recognised. But the recent decision of the House of Lords in the *Kafiristan*[2] held him entitled to obtain salvage reward. The fact that the salved vessel is at the same time under charter to owner of salving vessel does not prevent him if the charter-party does not transfer possession of the salved ship to him. The fact that the salved vessel is at the time chartered to the owner of the salving vessel does not entitle him from claiming salvage, if the charter does not transfer possession of the salved ship to him and *vice versa*.

The amount of salvage is determined by the extent, nature and effect of his services and the merit and sacrifice of the person rendering them. The basis of salved value on which salvage is awarded is the value of ship and cargo when brought to safety. If the salving ship sustains damage in the course of her service and lose her earnings then, if salved property is ample, while remunerating the salvage, enough should be awarded to the salvor to cover the actual loss which the salvor incurred. Want of care or skill or misconduct of salvor is also considered in fixing the amount of salvage. Section 519 of Merchant Shipping Act of 1894 enjoins the person finding wreck to give it to the Receiver of the District. Agreements as to the amount of the salvage are set aside if unfair. Competency of the parties and knowledge of all the circumstances and the critical nature of the situation, etc., will be considered to ascertain whether the agreed amount is excessive or unfair. Salvage agreements by the Master bind the owner only when the contract is made under necessity and for Master's benefit[3]. Contributions to salvage by different interests, such as the ship, the cargo and the freight, depend upon the benefit secured by each. Only those that are benefited are liable. If a sum is awarded as salvage reward, each interest is to contribute towards it in proportion to its value. In awarding salvage, value of the cargo is estimated at the place of termination of salvage service, deducting usual expenses and charges on a sale of the goods. Wearing apparel and effects of passengers, of Master and of the crew do not contribute. When salvage service becomes necessary owing to fault of the shipowner the shipowner is not entitled to contribution from other interests.

Wreck.—By the common law, the king has the right to wreck. Formerly, if a living thing escaped from a ship, the owner has a right to it within a year. Later on, the owner was given the right to claim the goods also within one year. Originally the right to claim them was granted to the Lords of Manors near the Coast who exercised it on behalf of the King. In the case of a derelict ship "wreck" includes goods thrown to lighten a vessel called jetsam, goods sunk but tied to some floating mark to show the place called lagan, and goods washed out of the ship and remain afloat called floatsam, etc. By Merchant Shipping Act, the superintendence of all wreck was placed under the Board of Trade who appointed receivers throughout the Kingdom[4].

1. (1938) A.C. 173.
2. (1938) A.C. 136.
3. *The Renpor*, (1883) 8 P.D. 115 at 118, Bret, M.R.
4. *Vide* Ss. 510, 511, 518, 525 of M. S. Act, 1894, and Ss. 146, 272 to 279 of the Indian M. S. Act, 1923.

Salvage and wreck in case of aerial navigation. On Air—Article 23 of Paris Convention, 1919, provided that, with regard to salvage of aircraft wrecked at sea, principles of maritime law will apply in the absence of an agreement to the contrary. By section 11 of the Air Navigation Act of 1920, the law relating to wreck and salvage and to the duty of rendering assistance to vessels in distress (including the provisions of English Merchant Shipping Act, 1894 to 1916) was extended to aircrafts. Section 11 (1) of the Air Navigation Act of 1920 and 1936 provides that any services rendered in assisting or saving life from or saving the cargo or apparel of, an aircraft in, on, or over the shores of the sea or of any tidal water is to be deemed to be salvage services as if they had been rendered in relation to a vessel. Reward for salvage services may be earned by an aircraft and its owner is entitled to reward The above provisions apply even if the aircraft concerned is a foreign one and notwithstanding that the services are rendered elsewhere than within the limits of the territorial waters adjacent to His Majesty's Dominions Aircraft owned by the Crown is subject to the same limitation in the matter of reward for salvage as His Majesty's Ships, *i e*, the Crown could lay no claim for loss, damage or risk to aircraft or to her shores The House of Lords held that no claim by Commander or crew for salvage service is to be allowed without the consent of the Secretary of State first obtained. Secretary of State is not entitled to claim salvage even by agreement[1].

Freight and Demurrage, Liens and Preference. Freight—Freight is the reward payable for the carriage of goods on arrival of the goods ready to be delivered to the consignee in a merchantable condition. Payment of freight and delivery of goods are concurrent conditions No freight is claimable if shipowner has been prevented from carrying goods to their destination although by causes beyond the carrier's control such as the fact that owing to their own infirmities, the goods have to be destroyed or sold, and the goods cannot be carried to their destination But freight is payable although the goods are carried in a damaged condition, if they are substantially the same goods as those shipped (Vide *Asfar & Co* v *Blundell*[2]) The freighter cannot deduct from the freight for damage to goods but only a separate cause of action for damages lies Freight is payable by shipper or his agent or, consignee

Kinds of freight.—There are various kinds of freight (*a*) Lump sum freight, (*b*) Advance freight, (*c*) Time freight and (*d*) Back freight To earn lump sum freight the voyage has to be completed by the ship or the cargo transhipped to another vessel and delivered at destination Lump sum freight is payable by the shipper even when some of the goods are lost through causes other than excepted perils, where the completion of the voyage is prevented by freighter or where enemies' goods are captured in a neutral ship (when full freight is payable by the enemy) Advance freight is payable though ship and goods are lost. Payment does not depend upon delivery If after advance freight is paid, the voyage is abandoned or if the ship is lost no part of the freight is recoverable Time freight is payable in proportion to the time during which the ship is occupied The time occupied in repairs are not deducted. The time for which the freight is to be paid runs without a break from the beginning to the end of the voyage When cargo owners fail to take delivery in time, the shipowner may incur expense to take care of the cargo and charge the cargo owner with what is known as the "back freight" to cover the expenses incurred. There is a fifth kind of freight known as dead freight which expression is used to denote compensation payable to a shipowner when the charterer has failed to ship a full cargo

Freight, how calculated and paid—The rate to pay freight is generally stated in the Bill of Lading or charter-party If not, it is calculated at the rate prevailing at the time when shipment was made Where the Bill of Lading expresses that the goods are to be carried freight free or at a nominal rate, the holder of the

1. *Admiralty Commissioners* v *Valverda (Owners)*, (1938) A C. 173

2. (1896) 1 Q B 123

Bill of Lading is entitled to have goods on paying that alone The rate stipulated in the contract is binding on a subsequent mortgagee with possession of the ship.

The measurement of goods for freight is done by reference to some standard weight and measure specified in the contract. In the absence of a contract or of a uniform custom, the rule is that, if weight and measurements at the port of loading and at the port of discharge differ, the lower weight and measurements are to be taken To whom freight is payable depends upon the terms of the contract of affreightment, or if no person is named therein, to the person with whom the contract is made or to whom or to whose agent the freight is made payable, subject to any subsequent dealings, such as assignment of the freight or mortgage of the ship It may be payable to the shipper, the master, the broker, or a third person or the charterer or the assignee of the freight or the ship or a mortgagee of the ship [1]

Lien for freight—At common law, the shipowner has a possessory lien on cargo for freight (but not dead freight, advance freight nor freight payable after delivery) due on the same voyage It is enforceable by retaining possession, but section 497 of the Merchant Shipping Act, 1894, gave him the power of sale after keeping the goods for 90 days. A broker or shipping agent has his lien for charges and if his charges are not paid before goods reach destination, he can exercise his lien. Liens may also be created by express agreement, such as for dead freight or for demurrage, etc. Maritime lien is a privileged claim on a ship, or on her cargo or on both of these for freight or charges in respect of service done to or in respect of injury caused by them. There is no maritime lien on King's ships or ships of a foreign State Maritime lien travels with the thing into whosoever hands the thing passes. It is not dependent on having possession

Demurrage.—Demurrage is a sum agreed to be paid by charterer as liquidated damages for delay beyond a stipulated time for loading and unloading It is compensation for undue detention [2] Demurrage is payable after expiry of "Lay days" "Lay days" run from the date when the ship is ready to proceed for loading and discharging When demurrage is not provided for, damage for detention is payable on the lapse of Lay days, or on the lapse of a reasonable time or on the lapse of the fixed number of days for which demurrage is claimed Charterer undertakes to load or to unload either in a fixed time or in a time not fixed If the engagement is to load or unload in a fixed time, the engagement is absolute and after the ship is ready no impediments excuse charterer.

If no definite time is fixed for loading or unloading, it should be done within a reasonable time which means reasonable under the circumstances or reasonable with reference to the customary methods of the Port Persons liable on the charter-party for demurrage are the charterer or the parties to the Bill of Lading, if the Bill of Lading incorporates the stipulations in the charter-party or if a person takes goods without protest under the Bill of Lading. Persons liable for demurrage on a Bill of Lading are the shipper or consignor, the person presenting the Bill of Lading for delivery and under the Bill of Lading Act, every consignor named in the Bill of Lading to whom property passed

Lien—Lien is a right to retain possession by a shipowner until freight or other charges due to him are paid while goods are taken by consignee. It can be enforced by retaining actual or constructive possession.[3] It is not enforceable on goods wrongly shipped A shipowner may have lien on goods (*a*) under common law and (*b*) by express agreement Common law liens are liens on possession when freight is payable on delivery Some examples of them are liens for freight, for general average contribution and for expenditure on cargo. When freight is payable otherwise than on delivery, there is no lien unless by express agreement.

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1 *Vide* Scrutton of Charter Parties, Art 147, 13th Ed, p 419

2. *G W Ry Co* v *Phillips*, (1908) A C 101

3 *Vide* Blackburn, J, in *Hingston* v *Wendt*, (1876) 1 Q B D 367 at 373

So there is no common law lien on advance freight, dead freight, nor freight payable after delivery. Some examples of liens by express agreement are liens for dead freight, demurrage, advance freight, charter-party freight as against the holder of a Bill of Lading and all expenses or loss caused by incorrect description of goods or shipment of dangerous goods without notice Lien is enforced on all goods. If part of the goods are parted with, lien on the remaining goods for the whole freight is enforced Lien revives on regaining possession

Lien of carriers by air—In the case of carriers by air, Article 18, paras. 1 and 2 of "General Conditions of Carriage of Goods" of International Air Traffic Association provide that carriers by air have the right of a creditor secured by lien over the goods for all sums due under the provisions of the Contract of Carriage. These rights remain as long as the goods are in the possession of a carrier or of a third party who retains them on his behalf

Preference and Rates—There was nothing in common law forbidding a carrier from preferring one customer more, or charging him and his goods less than another, provided higher charges are not unreasonable. Two main statutes forbade undue preference. Section 90 of the Railway Clauses Act, 1854 and sections 42 to 44 of the Indian Railways Act of 1890 require to charge all equally for the carriage of passengers or goods over the same portion of their line and between the same points of departure and arrival If higher charges are collected, carrier is liable to refund. Under section 2 of the Railway and Canal Traffic Act, 1854, no company is to give undue preference to any person or to any particular traffic. But carriers are justified in giving better terms to one trader on the ground that he supplies more traffic, that he packs the goods in such a way as to effect a saving of expense to the carrier or that his supply is in the interests of the public, for example, where goods are supplied to a Municipal Corporation or city at less rates than to an individual The principle of "Longhead and low rate" where rates for long distances are less in proportion than for short distances is worthy of notice This rule has got exceptions as where goods which are not likely to compete with goods at home, low rate is allowed though it has no longhead So also goods coming from foreign port are carried at less rates for short transit because of the convenient packing causing less expense to carry [1]

CARRIAGE OF PASSENGERS, OF LUGGAGE AND OF ANIMALS AND MEASURE OF DAMAGES.

Carriage of Passengers—Contract is made by purchase of ticket which is both receipt for hire and evidence of agreement to carry. In the case of carriers by air under article 3 (1), Schedule I of the Carriage by Air Act, 1932, passenger's ticket is to contain place and date of issue, places of departure and destination, agreed stopping places, name and address of carrier, and a statement that it is subject to the rules of "Convention" Violation of these conditions precludes the carrier from claiming exclusion from or limitation to his liability. Both passenger and carrier are bound by the terms of the ticket If a railway company or other carriers advertise a train which does not run and passengers act on the advertisement, the Railway company or carrier is liable If the train arrives late and a passenger misses a connection and is not able to reach destination in time, he can claim damages for natural consequences, or he can engage a vehicle to destination and charge the carrier reasonably.

Liability—Carrier of passengers are liable only for negligence. They are not liable for negligence of person over whom the carrier has no control [2]

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1. *L & N W Ry Co.* v *Evershed,* (1878) 5 H L 45 and *East India Co* v *Kalidas Mukerjee,* (1901) A C 396.
3 App. Cas 1029
2. *Daniel* v. *Metropolitan Ry Co*, (1871) L R.

They are not liable for injuries arising from latent defects in machinery, not discoverable by reasonable skill and foresight nor are they liable for injury by contributory negligence of the passenger A carrier such as a railway company is liable for negligence such as for not keeping its premises safe, for allowing carriages to get over-crowded, for squeezing passengers' fingers by the porter shutting the doors of the carriage, etc.[1] If squeezing is caused when the passenger is entering or leaving the train, carrier is liable, but if it is caused after he has entered into the train the carrier is exonerated [2] When doors fly open and a passenger falls out and gets injured, the Railway company is liable as a passenger has a right to expect doors properly fastened When a passenger falls out by jerks when entering or getting out of the train, the defence that the train is in motion is a good and valid defence. When a train either overshoots or stops short of a platform and porters call out " alight " the passenger alights and falls down, the carrier was held liable [3] But a Railway company is not bound to guard against wilful disorder of passengers, or to protect them from one another[4] Liability also arises independently of contract, for example, when a child who was travelling with its mother, with no ticket for the child either because the child was below 3 years of age or because the mother did not know that the child required ticket, was injured by the negligence of the carrier, it was held the carrier was liable Carrier can limit his liability by giving reasonable option to passenger to travel at less fare when passenger is bound by such condition, provided the passenger is not a minor In the case of through tickets over other carriers' lines, contracting carrier is liable for negligence of other carriers for injury caused in the railway lines of those others. The Railway company on whose lines the injury happened are also liable In such cases the passenger can sue both or either

In the case of carriers by air, in the event of death or bodily injury to passenger in order to claim damages, the accident should have occurred on board the aircraft or in the course of any of the operations of embarking or disembarking The carrier avoids liability by proving negligence in pilotage, or in the handling of aircraft or in navigation and by proving that he and his agent took all measures to avoid damage or by proving contributory negligence of the injured. Amount of damages claimable is not to exceed 120,000 francs [5]

Damages —Ordinarily damages are claimable for injury to oneself, wife and servant and for children if they render service Under old law, if the injured dies, cause of action does not survive But the Fatal Accidents Act, 1841 and the Indian Act XIII of 1855 for compensation for death by actionable wrong gave a right of action to husband, parent or child For action under these Acts, the plaintiff should suffer pecuniary loss or lose reasonable prospect of pecuniary gain. If the injured does anything during his lifetime to prevent such an action as by waiver, by acceptance of compensation in full discharge or by contributory negligence, then no right of action survives In the case of injury to passenger by a carrier by air, section 1 (4) of the Carriage by Air Act of 1932 confined the remedy of the injured to the Act itself and excluded all remedies by common law or by statute . In *Green* v. *Imperial Airways*[6], it was held that Fatal Accidents Act did not apply to carriers by air The Act keeps alive the remedy to legal representatives (*Vide* article 27 of Schedule I to the Carriage by Air Act of 1932)

Nervous shock —Questions have arisen whether damages are recoverable for injury due to nervous shock from fright In *Victorian Railway Commissioners* v. *Coultas*[7] on appeal from the Australian Court, the Privy Council has held that the

1. *Jackson* v. *Metropolitan Ry Co*, (1877) 3 App. Cas 193
2. *Fordham* v. *London Brighton & South Coast Ry Co*, (1868) 18 L T. 566
3 *Bridges* v. *North London Railway Co*, L R. 7 H L 213
4 *Pounder* v *North Eastern Ry. Co*, (1892) 1 Q B 385, *Cobb* v *Great Western Railway Co*, (1894) App Cas 416
5 *Vide* Arts 17, 20 and 21 of Sch. I to Carriage by Air Act, 1932
6 (1936) 52 T L R 681.
7 (1888) 13 App Cas 222.

plaintiff could not recover, since damages arising from mere sudden fear, not accompanied by any physical injury are too remote and not the natural and reasonable consequences of the negligent act A decision of the Privy Council is not binding on the Court of the United Kingdom and the judges of the Courts of the United Kingdom and Ireland have definitely refused to follow this decision In *Dulien* v. *White*[1], the King's Bench division in England and in *Bell* v *Great Northern Ry Co. of Ireland*[2], it was held that where nervous shock is caused to a person by an act of negligence which gives rise to a reasonable fear of immediate personal injury, damages may be recovered though no actual impact occurred. Courts in India are not bound to follow the decision of the Courts of the United Kingdom and Ireland in preference to that of the Privy Council

Passengers' luggage—From earliest days of public coaches, it was the custom to take personal luggage without paying additional charge Fare was understood as including charge or remuneration to carry luggage All Railway companies are bound to carry luggage free of extra charge Ordinarily personal luggage alone is to be carried free According to Lord Cockburn, C. J., the true rule is that " whatever the passenger takes with him for his personal use or convenience, according to the habits and wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose, of the journey must be considered as personal luggage."[3] This definitely excludes from "luggage" what are carried for business purposes such as merchandise or articles of furniture or household goods But the term "personal use" and "immediate necessity" might include a gun case of a person going by train to a place where he intended to shoot The point arose in *Britten* v *Great Western Ry Co* [4], where a passenger who took a cycle by train to mount and ride it after alighting from the train contended that it is for his personal use and that he is entitled to carry it without extra charge According to Channel, J , to constitute personal luggage there must be · first of all, it must be for the passenger's personal use : next it must be for use in connection with the journey which means that it must be something which is habitually taken by the person when he is travelling, for use, not merely during the actual journey, but for use during the time he is away from home. In the word luggage there is involved the idea of a package or something of that sort and an article or something of that sort which is taken as it were, loose, as a bicycle is taken, is subject rather to different considerations· Following *Macrow* v *Great Western Ry Co* [3], a revolver, ear-defenders, a pair of binocular glasses and a flash lamp carried in a suit case by an army officer during war were held to be personal luggage in *Jenkyns* v *Southampton Steam Packet Co.*[5] In *Buckland* v. *Rose*[6], luggage was held to consist of articles intended for the personal use of the passenger or his convenience as distinct from merchandise which is carried for the purpose of business

In the case of carriers by air, Article 4 of Schedule I to the Carriage by Air Act of 1932 requires that the carrier must give a luggage ticket showing (*a*) the place and date of its issue, (*b*) places of departure and destination, (*c*) name and address of the carrier, (*d*) number of passenger's ticket, (*e*) a statement that delivery is to be made to the bearer of the ticket, (*f*) number and weight of the package, (*g*) amount of value declared, and (*h*) a statement relating to liability If a luggage ticket does not contain clauses (*d*), (*f*) and (*h*) carrier is not entitled to exclude or limit his liability Liability of a carrier by air is limited to 250 gold francs per kilogram unless the consignor had made a declaration of value at the time of delivery and paid a supplementary sum if required. *Vide* Article 22 (2). In the case of objects which a passenger takes charge a limitation of 5,000 gold francs is placed upon damage to them

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1 (1901) 2 K B 669
2 (1890) 26 L R Ir 428
3 *Macrow* v *Great Western Ry Co*, (1871) 6 Q.B. 612
4 (1899) 1 Q B 243
5 (1919) 2 K B 135
6 (1933) 1 K B. 329

Liability.—As regards luggage, carriers by land such as a Railway company but not coming under the Indian Railways Act (IX of 1890) and carriers by boat, such as a Steam Navigation Co., are liable as insurers unless it is in the personal control of the carrier. Goods under the guise of luggage are not liable for free carriage but if the Railway company accepts things which they know are not personal luggage the company are liable for their safety

A carrier by air is not liable if he proves that he or his agent took all necessary measures to avoid damage or that it was impossible for him or for them to take such measures, or if he proves that damage was occasioned by negligence in the pilotage, landing or navigation of aircraft or by the contributory negligence of the person injured.[1] Carriers by air are liable for loss occasioned by delay in the carriage of passengers, luggage or goods.

Railway companies allow commercial travellers to carry free a quantity of their business effects in which case liability can be limited. Railway companies and passengers may agree not to carry free personal luggage, for example, as in the case of cheap excursion trains where cheap return-tickets are issued

Regarding the liability of a railway company as common carrier of luggage carried in the van of the train by which the passenger is travelling, under section 72 of the Indian Railways Act (IX of 1890) a Railway company is liable for loss of goods entrusted to it as a bailee under sections 152 and 161 of the Indian Contract Act. Under section 75 of the Indian Railways Act, a Railway company is not liable for loss or destruction of any parcel or package containing articles mentioned in the second schedule unless their value is declared and a percentage on the value is paid If the goods are carried in the compartment with the passenger, the company is not so fully liable, since full control over luggage is not given to the company, but would be liable as common carrier for collision, etc.

Liability of a Railway company for passengers' luggage begins the moment it is handed over to a servant of the company entitled to receive it though the train starts after some time. At the end of the journey the Railway company (carrier) is bound to deliver the luggage at the platform and to allow passengers a reasonable time to claim it and passengers should be ready to receive it within a reasonable time. Where a railway company provides porters to carry luggage, the company's liability continues as carrier till porters perform their duty After the lapse of a reasonable time, the contract has been performed by the railway company and the passenger has to make a fresh contract to place goods in cloak room.

Cloak room tickets—The company's liability for goods deposited in cloak room is not as common carrier but as a warehouseman, subject to conditions such as limiting liability for parcels of certain value unless a larger fee is paid. Where there are no conditions in the cloak room ticket, the Railway company is liable as a warehouseman with the exception that in case of misdelievery liability attaches to it without negligence. A Railway company has lien for cloak room charges provided the depositor has a right deal with the article, for example, if a thief deposits, the Railway company has no lien

Through tickets.—Railway companies issuing through tickcts are liable as common carriers throughout the whole journey. Contracting company can limit their liability. Contracting company can contract to limit its liability when loss occurs on lines of other companies also. Such contract is not governed by section 7 of the Railway Canal Traffic Act and binds consignor if brought to his knowledge, although it is not signed by him and although it is not reasonable But section 80 of the Indian Railways Act (IX of 1890) makes the Railway company liable notwithstanding such a contract. The non-contracting company is liable if loss is shown to have occurred on their line but delivery to them is to be proved, otherwise contracting company is liable.

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1 *Vide* Arts. 20 and 21 of Sch I of Air Navigation Act of 1932.

Under Article 30 to Schedule I of Air Navigation Act, 1932, in the case of successive carriers by air, as regards an injury to a passenger, he can take action against the carrier in or during whose carriage the accident has happened and as regards damage to luggage or goods, the passenger or consignor can sue the first carrier, the passenger or consignee can sue the last carrier, during whose carriage the accident happened and those carriers will be jointly and severally liable.

In the event of loss or damage to registered goods or luggage in charge of a carrier, he is liable if the occurrence happened during the carriage by air, whether in an aerodrome or on board an aircraft or in the case of landing outside an aerodrome in any place whatsoever The carrier might avoid liability by proving negligence in pilotage, in the handling of aircraft, or in navigation and that he and his agents took all measures to avoid damage or that the damage was caused by contributory negligence of the injured. And the amount of compensation is fixed under the Act. *Vide* Articles 18, 20 and 21 of Schedule I to Carriage by Air Act of 1932.

Carriage of Animals.—Law governing carriage of animals by a carrier by air is the same as the law governing carriage of goods by the same carrier Under section 34 (4) of the Air Navigation Act of 1936, animals are included in the term goods and the law as to carriage of goods by air govern the carriage of animals also by air. Common carriers by land did not carry larger animals before the advent of railways. In the earlier days of Railway companies they did not profess to be carriers of animals and they did so only if they are relieved of all responsibility. The Railway and Canal Traffic Act of 1854 obliges every railway company to afford reasonable facilities for receiving, forwarding and delivering goods; and traffic is expressly defined to include all animals So Railway companies are bound to carry animals thereafter. Section 3 (*n*) of the Indian Railways Act (IX of 1890) defines traffic as including animals. Under section 7 of the Railway and Canal Traffic Act, a Railway company could not relieve themselves of all liability for their neglect or default. Even if they carry without conditions they are liable as common carriers, *i.e.*, as insurers. Even then the Act protects the carrier from liability beyond a certain limit in the case of most important classes of animals such as horses, camels, horned cattle, donkeys, sheep, goats, and dogs and unless declaration of their higher value is made at the time of delivery and an increased charge is paid If no such declaration is made, higher value cannot be claimed even if the Railway come to know of their higher value from some other source If such a declaration is made, no value higher than that is claimable though the Railway company is not bound by that declaration if it could prove that the value of the animal is less.[1] With regard to other animals, a Railway company is bound to carry them on reasonable terms. Under English law, a Railway company is liable as insurers for the carriage of animals. Under the Indian law, they are liable as bailees[2]. A Railway company is not bound to carry wild beasts. If they do so, they can insist on strict conditions. They are justified in refusing to carry unless they are relieved of all liability except upon proof of negligence And in the case of valuable animals of great pecuniary risk, they can refuse to carry except upon less pecuniary liability.

In aircraft, live animals can be carried only by special arrangement. *Vide* Article 8, para 2 of "General Conditions of Carriage of Passengers and Luggage" of International Air Traffic Association. Section 7 of the Railway and Canal Act, 1854, limits liability in case of neglect or default in the "receiving, forwarding and delivering" of such animals. So an animal injured when being brought to company's premises for being carried before any declaration is made is liable up to the limit mentioned in the Act, for the negligence is "negligence in the receiving." As in the case of goods, Railway companies may offer to carry animals at reduced rates for being relieved of all liability except for negligence of company and its

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1. *Vide* S 73 of the Indian Railways Act (IX of 1890).

2. *Vide* S 72 of the Indian Railways Act (IX of 1890).

servants and on other terms. The owner alleging injury by negligence is to prove it. But the circumstances may be such to raise clear inference of negligence. For the defence of inherent vice in the animal, it is necessary to show that the animal is injured through its own act and that the act causing the injury is so far out of the common that the company could not be expected to foresee It is not necessary to show that the animal is injured by its own struggles and no negligence on the company need be proved The vehicle should be strong enough

The Railway company is bound to provide good and proper places and appliances for loading and unloading animals and to guard them against injury by escaping on into the railway lines. Where delivery of cattle is complete, unloading is carried on by both the servants of the Railway company and of the consignee. For the negligence of the latter, the Railway company is not liable As long as cattle is unloaded and in company's premises, larger measure of responsibility rests with the company. If owner provides means for securing animal, the Railway company is not liable for their insufficiency. If company's servants notice at that time that such means are insufficient, the Railway company is made liable.

Delay in delivery may cause serious deterioration and even death of the animal. It is the duty of the Railway company to give them food or water at their expense and recover such charges. There is a statutory duty on Railway company to supply food and water under section 23 of the Diseases of Animals Act of 1894 The Railway company has to provide food and water at particular stations and to give them food and water at the request of consignors. Even if there is no such request the company is bound to supply them with water if animals remain in the railway for 24 consecutive hours Omission to do so for twenty-four consecutive hours is penal It is the duty of the consignee to provide for reception of the animals at the end of transit If he does not do so, he will be liable for the consequences If animals are not received by consignee, the Railway company is to take reasonable care of them and not to turn them out into the road nor let them starve. The company is entitled to recover from owner or consignee such expenses as are incurred in taking care of them If animals are not claimed by the owner even after reasonable time the Railway company is entitled to sell on serving notice on the owner and give the surplus to him [*Vide* section 56 of the Indian Railways Act (IX of 1890)]. Failure of the Railway to provide for safety at the end of transit is negligence for which the company is responsible.

Railway companies have a lien in respect of charges due to them. In exercise of that lien, they can sell them after the prescribed number of days on publishing notice in the local papers and appropriate for their charges and send the balance to the owner. [*Vide* section 55 of the Indian Railway Act (IX of 1890)]

Measure of Damages.—The principles of the law of damages relating to carriage by land and air hold good in the case of damages relating to carriers by water. Damages may be fixed by contract as a sum payable. The general rule is that the party wronged is to be placed in the same position as before. No compensation is allowed for remote causes. Carriers are liable for damage reasonably expected to follow from breach but if special circumstances are contemplated by parties, then carriers are liable for losses arising from them on breach of contract. *Hadley* v. *Baxendale*[1] Mere knowledge of special circumstances, though not from notice given to the carrier is sufficient. In any case there should be notice before entering into the contract and not afterwards. The Plaintiff should not aggravate the loss through unreasonable conduct. He must mitigate it. Compensation is not allowed where losses might reasonably be avoided by taking prudent steps within his power, for example, a freighter engaging another ship if his goods are left behind. Freight earned by a substituted ship is taken into account in estimating

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1 (1854) 9 Exch 541.

damages. Incidental advantages to a ship owner are not taken into account in estimating damages, for example increase of freight earned by other vessels of the shipper owing to the improper detention of the chartered ship

A shipowner is entitled to damages for failure to load the ship or for failure to load with the kind of cargo, the damages being the difference between what would have been received and what is actually received as freight, deducting expenses incurred to obtain substituted cargo. If freighter is unable to procure other means of carriage the difference from the value of goods at the place of destination at the agreed time of arrival *minus* their value at the place of shipment and the amount of freight and insurance is the amount of damages awarded.

The freighter may lose by improper delay in carrying and delivering the goods in one of three ways He may lose from having been deprived of the use of the goods Unless notice of the special use to which the goods are to be put is given to carrier he is not liable for loss of such special use[1] He may lose by deterioration of the goods. If deterioration is due owing to the sensitive condition of goods and that sensitive condition is not brought to the knowledge of the carriers, no damages are allowed. He may lose by fall in the market value of the goods. If the fall in the market value is not due to periodical fluctuations, it is not a circumstance by which carrier's liability may be increased.

Where the carrier wholly fails to deliver goods or delivers them in a damaged condition, he is liable for the value at the time and place of delivery. Where there is no market, their cost of manufacture together with expenses of transit and a reasonable sum as profit is the amount of damages[2].

In cases of wrongful deprivation of goods which could not be replaced, knowledge of special circumstances is not necessary. In such cases, carrier is bound to compensate for all special losses sustained by owner[3].

Where goods are shipped under a wrong description and a carrier is deceived as to their quality and value, then if it is done fraudulently, carrier is not liable for damages If it is done by mistake, the carrier is liable for the article as misdescribed But in cases to which Carriers of Goods by Sea Act of 1924 applies, the shipper is deemed to guarantee the accuracy of particulars and liable for inaccuracies and that the carrier or shipper is not liable for damage, if their nature and value are knowingly misdescribed.

In estimating damages to the owner of the goods, a shipowner or carrier is not entitled to any benefit from the fact that insurers have paid or are liable to pay.

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1. *Wilson* v. *L & Y. Ry Co*, (1861) 30 L J. C. P. 232 and *Simpson* v *L. N W Ry. Co*, (1876) 1 Q.B D 274

2 *O'Hanlan* v *Great Western Ry Co.* (1865) 34 L J Q B. 154.

3 *Bodley* v *Reynolds*, (1846) 8 Q.B 779.